

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 10/025,794 Confirmation No.: 5962

Applicant: Jeff S. Eder

Filed: December 26, 2001

Examiner: Richard Weisberger

Art Unit: 3693

Docket No.: AR - 28

Customer No: 53787

NON STATUTORY CLAIM REJECTION

Sir or Madam:

The March 31, 2008 Office Action for the above referenced application contains what appears to be a non-statutory rejection of claims for a purported lack of written description. Some of the reasons these claim rejections appear to be non-statutory include:

1. No evidence was provided to support these claim rejections. U.S.P.T.O. decisions require the support of substantial evidence (see *in re Gartside*) and written description rejections require a preponderance of evidence (see MPEP 2163).
2. Written descriptions are valid if they teach someone of average skill in the art how to make and practice an invention. The 3/31/2008 Office Action contains no evidence that anyone of average skill in the art had any difficulty understanding the written description.

To correct this apparent error, the Assignee is hereby requesting that an affidavit under 37 CFR 1.104 detailing the facts in the personal knowledge of the Examiner (or anyone else in the Office that provided input to the written description rejection) that support the written description claim rejections be forwarded to the Assignee within the next 30 days. The affidavit should also identify the combination of teachings that were independently developed by those whose opinions were used as the basis for the affidavit. The Supreme Court has determined that those of average skill in the art have the ability to independently combine teachings to form new inventions. Identifying the combinations of teachings developed by those whose opinions were used will thus provide evidence that the cited individuals possess the required level of skill in art. If the Examiner is unable to provide any evidence to support the claim rejections, then the Assignee respectfully submits that the Examiner should withdraw the apparently non-statutory claim rejections.

Respectfully submitted,
Asset Trust, Inc.

/B.J. Bennett/

B.J. Bennett, President
Date: May 9, 2008